

MR. JUSTICE M.H.KADRI

Date of decision: 31/08/1999

COMMON ORAL JUDGEMENT

1. Admitted. Mr. K.M. Sheth, learned counsel, waives service of notice on behalf of opponent/opponents in each appeal. At the request of learned counsel appearing for the parties, all these appeals are taken up for final hearing today.

2. All these appeals which are filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated April 30, 1998, rendered by the learned Second Extra Assistant Judge, Kheda, at Nadiad, in Land Reference Cases Nos. 260 of 1994 to 274 of 1994. All the abovereferred to land reference cases were heard and decided together and Land Reference Case No.260 of 1994 was treated as main case in which the parties had led common evidence. Lands belonging to the claimants were placed under acquisition pursuant to publication of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894 on August 29, 1991. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

3. The Executive Engineer of Narmada Project had proposed to the State Government to acquire agricultural lands of village Kakerkhad, Taluka Kapadwanj, District Kheda, for public purpose of Ghodasar Branch of Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Kakerkhad were likely to be needed for the said public purpose. Therefore, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued which was published in the Government Gazette on August 29, 1981. Those whose lands were sought to be acquired were served with notices and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer, Nadiad, had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Kakerkhad which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of Ghodasar Branch of Narmada Project. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on February 20, 1992. Interested persons were,

thereafter, served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate of Rs.10,000/- per Are, but, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated July 27, 1992, offered compensation to the claimants at the rate of Rs.210/- per Are for the irrigated lands and Rs.140/- per Are for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Kheda, at Nadiad, which were numbered as Land Reference Cases Nos. 260 of 1994 to 274 of 1994. In the reference applications, it was pleaded by the claimants that their agricultural lands which were acquired were highly fertile and having regard to over all development which had taken place near the acquired lands, they were entitled to compensation at the rate of Rs.10,000/- per Are. The reference applications were contested by the acquiring authorities contending, inter alia, that determination of compensation by the Special Land Acquisition Officer was just as well as proper and, therefore, reference applications should be dismissed. Upon rival assertions of the parties, necessary issues for determination were raised by the Reference Court at Exh.7. In order to substantiate the claim advanced in the reference applications, claimant, Fulsinh Rajabhai Dabhi, was examined at Exh.32. The witness deposed before the Court that the lands acquired were very fertile and each claimant was taking three crops in a year. The witness asserted that each claimant was earning Rs.30,000/- per bigha by selling agricultural produces. According to the witness, village Kakerkhad was near village Sarkhej and the agricultural lands of village Sarkhej were similar to the lands which were acquired in the present case. The witness produced previous award of the Reference Court rendered in L.A.R. No.1247 of 1993 with respect to agricultural lands of village Sarkhej at Exh.31. On behalf of the acquiring authorities, Deputy Collector of Narmada Project, Mr. Shah, was examined at Exh.36. The witness examined on behalf of the acquiring authorities produced sale index at Mark 36/1 and 36/2. After considering the evidence led by the parties, the Reference Court held that previous award of the Reference Court rendered in respect of agricultural lands of village Sarkhej was comparable as well as relevant for the purpose of determining market

value of the lands acquired in the present case. Previous award indicated that the agricultural lands of village Sarkhej were valued at Rs.870/- per Are as on August 29, 1991, which was the date of publication of notification under Section 4(1) of the Act. However, the Reference Court noticed that the lands acquired in the present case were located near river Vatrak and, therefore, appropriate deduction should be made from the market value of the agricultural lands of village Sarkhej for the purpose of determining correct value of the lands acquired in the present case. In the ultimate analysis, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.710/- per Are by the impugned common award giving rise to these appeals.

4. Mr. R.C. Kodekar, learned Assistant Government Pleader, submitted that previous award of the Reference Court rendered in respect of agricultural lands of village Sarkhej is neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.710/- per Are and, therefore, the impugned award should be set aside. What was stressed was that the sale index produced by the acquiring authorities at Mark 36/1 and 36/2 ought to have been relied upon for the purpose of assessing market value of the lands acquired in the present case and as the award is excessive, the appeals should be allowed.

5. Mr. K.M. Sheth, learned counsel for the claimants, submitted that previous award of the Reference Court rendered in respect of agricultural lands of village Sarkhej is comparable as well as relevant for the purpose of determining market value of the lands acquired from village Kakerkhad and, therefore, it cannot be said that any error is committed by the Reference Court in placing reliance on the said award for the purpose of determining market value of the lands acquired in this case. What was asserted was that a just award has been passed by the Reference Court determining market value of the lands acquired and, as no ground is made out to interfere with the same, the appeals should be dismissed.

6. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding

this group of appeals. Evidence of Fulsinh Rajabhai Dabhi, recorded at Exh.32, makes it clear that agricultural lands of village Sarkhej are similar to the lands acquired in the present case. Though one witness was examined on behalf of the acquiring authorities, it was never brought on record that agricultural lands of village Sarkhej which were previously acquired were not similar to the lands acquired in the present case. It was never brought to the notice of the Court that the lands acquired in the present case have certain disadvantages in comparison to the agricultural lands of village Sarkhej which were previously acquired. Under the circumstances, we are of the opinion that the Reference Court was justified in placing reliance on the previous award of the Reference Court rendered in respect of agricultural lands of village Sarkhej for the purpose of determining market value of the lands acquired in the present case. It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from another village. It was neither brought to the notice of the Reference Court nor it is brought to the notice of this Court that the previous award of the Reference Court was in any manner modified by the appellate court. On the contrary, the judgment rendered in First Appeal Nos.557 of 1998 to 563 of 1998 on June 19, 1998, shows that the previous award of the Reference Court in respect of agricultural lands of village Sarkhej was confirmed by the High Court. The previous award of the Reference Court produced at Exh.31 indicates that the agricultural lands of village Sarkhej were acquired pursuant to publication of preliminary notification under Section 4(1) of the Act on August 29, 1991. Therein, the claimants had claimed compensation at the rate of Rs.2000/- per Are., but the Land Acquisition Officer by his award dated June 29, 1992 had offered compensation to the claimants at the rate of Rs.210 per Are. Thereupon, references were sought and, in Land Reference Cases Nos.1247 of 1993, 1234 of 1993 to 1236 of 1993 and others, the Reference Court, by judgment and award dated September 30, 1997, had determined market value of agricultural lands of village Sarkhej at Rs.870/- per Are. The evidence of the claimant as well as the witness who was examined on behalf of the acquiring authorities indicated that the agricultural lands of village Kakerkhad which are acquired in the present case are situated near river Vatrak and, therefore, the Reference Court was justified in holding that appropriate deductions should be made from the

market value of the agricultural lands of village Kakerkhad for the purpose of determining correct market value of the lands acquired in the present case. The ultimate decision of the Reference Court that the market value of the lands acquired in the present case should be assessed at the rate of Rs.710/per Are on August 29, 1991, cannot be said to be erroneous at all. The Reference Court has correctly appreciated the evidence led in the case and applied principles which have been enunciated by the Supreme Court from time to time to the facts of the case. Determination of market value cannot be regarded as excessive at all. Under the circumstances, we are of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned award in these appeals. The appeals, therefore, cannot be allowed and are liable to be dismissed.

5. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

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